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*Attorneys for Defendant TD Bank, N.A.*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MATTHEW B. WEINSTEIN,

Plaintiff,

- against -

TD BANK, N.A.,

Defendant.

Case No.: CV 15 5902 (NG)(MDG)

**ANSWER**

Defendant TD Bank, N.A., by its attorneys, Zeichner Ellman & Krause LLP, answers the complaint, upon information and belief, as follows:

1. It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1-3, 16 and 18-20, except refers all questions of law to the Court.

2. It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4 and 7-9.

3. It denies each and every allegation contained in paragraph 5, except TD Bank, N.A., is a national banking association with a main office in New Jersey, and transacts business within this district.

4. It denies each and every allegation contained in paragraph 6, except there was a checking account at TD Bank with an associated debit card in plaintiff's name.

5. It denies each and every allegation contained in paragraphs 10, 14 and 17.

6. It denies each and every allegation contained in paragraph 11, except TD Bank denied plaintiff's claim for reimbursement and refers all questions of law to the Court.

7. It denies each and every allegation contained in paragraphs 12-13 and 22, except refers the Court to the contents of the referenced correspondence and contract for its content.

**FIRST AFFIRMATIVE DEFENSE**

8. Plaintiff's complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

9. TD Bank has defenses to the complaint based upon documentary evidence.

**THIRD AFFIRMATIVE DEFENSE**

10. If plaintiff suffered any losses, they resulted from his failure to exercise ordinary care.

**FOURTH AFFIRMATIVE DEFENSE**

11. Plaintiff's claims against TD Bank are barred by the doctrines of laches, waiver, estoppel and ratification.

**FIFTH AFFIRMATIVE DEFENSE**

12. Plaintiff has not suffered any damages as a result of any alleged conduct of TD Bank.

**SIXTH AFFIRMATIVE DEFENSE**

13. To the extent plaintiff has obtained or obtains restitution or other payment from anyone concerning the allegations made in the complaint, TD Bank is entitled to an offset in like amount against claims made against it in this action.

**SEVENTH AFFIRMATIVE DEFENSE**

14. Any damages allegedly suffered by plaintiff were caused, in whole or in part, by superseding and/or intervening acts of others than TD Bank.

**EIGHTH AFFIRMATIVE DEFENSE**

15. If the damages allegedly sustained by plaintiff occurred at the time and place and in the manner alleged in the complaint, such damages are attributable, in whole or in part, to the culpable conduct of plaintiff; and if any damages are recoverable against TD Bank, the amount of such damages shall be diminished in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

**NINTH AFFIRMATIVE DEFENSE**

16. Plaintiff should be precluded from recovery because he failed to mitigate his damages.

**TENTH AFFIRMATIVE DEFENSE**

17. No action of TD Bank was the proximate cause of any damages allegedly suffered by plaintiff.

**ELEVENTH AFFIRMATIVE DEFENSE**

18. To the extent that plaintiff obtained or obtains relief from anyone concerning the allegations in the complaint, TD Bank is entitled to a set-off in a like amount.

**TWELFTH AFFIRMATIVE DEFENSE**

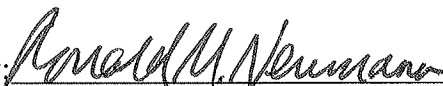
19. To the extent plaintiff had a policy of insurance covering any losses referred to in the complaint, plaintiff is precluded from recovery of such funds from TD Bank.

**WHEREFORE**, TD Bank demands judgment as follows:

1. dismissing the complaint in all respects together with the costs and disbursements of this action; and
2. for such other relief as this Court deems proper.

Dated: New York, New York  
December 8, 2015

ZEICHNER ELLMAN & KRAUSE LLP

By: 

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